

## DISCLOSURE STATEMENTS

The United States Trustee is charged with the responsibility of monitoring and commenting on disclosure statements in Chapter 11 cases pursuant to 28 USC Sec. 586(a)(3)(B). The following is information that the United States Trustee believes should generally appear in disclosure statements.

The list of items is neither exclusive nor exhaustive. Depending upon the size and nature of the debtor and the complexity of the plan, the actual requirements to satisfy the adequate information standard of 11 USC Sec. 1125(a)(1) may vary considerably.

1. **Purpose of the disclosure statement**. The disclosure statement should indicate that its purpose is to provide “adequate information” of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, that would enable a hypothetical reasonable investor typical of holders of claims (creditors) or interests (shareholders or other) of the relevant class to make an informed judgment concerning the plan. {See 11 USC Sec. 1125(a).} The disclosure statement should not resort to “boilerplate” language found in Colliers that disclaims all of the assumptions and dollar amounts contained in the statement.

2. **Vote required for approval**. The disclosure statement should briefly indicate the vote required for approval of the plan and should clearly indicate that creditors or interest holders have a choice—they can either vote for or against the plan. It should also state that creditors have accepted the plan if voting creditors of each class holding at least two-thirds in amount and more than one-half in number of the allowed claims voting, have voted for the plan. {See 11 USC Sec. 1126(c).} The disclosure statement should also state that a class of interests has accepted the plan if voting members of that class holding at least two-thirds in amount of the allowed interests voting, have voted for the plan. {See 11 USC Sec. 1126(d).} The disclosure statement should also make it clear that the foregoing percentage requirements are determined entirely from those creditors or interest holders that actually vote.

3. **Description of the plan**. The disclosure statement should give a description of the major provisions of the plan, including an estimated date by which creditors could expect to receive payment, an expected percentage return on their claims, and a summary of the treatment of various classes under the plan. Further, the summary should contain a description of each class of creditors and the approximate dollar amount of the claims in each class.

4. **Means of effectuating the plan**. The disclosure statement should indicate how the debtor intends to accomplish the goals of the plan—i.e. whether by infusion of cash by an investor, sale of real or personal property, continued business operations, issuance of stock or otherwise. If an investor is to provide funds, relevant information regarding the investor’s financial ability and legal obligation to provide such funds should be included. If the sale of property is contemplated under the plan, the statement should indicate what efforts the debtor has made since the filing to market its properties that are currently for sale, including the identity of the listing agent, the listing price, any offers received or anticipated, pending litigation which might affect the sale of the property, the equity in the property (including the source of the valuation), and any alternatives for marketing the property in the future. If the debtor plans to issue stock under the

plan, the statement should indicate compliance with 11 USC Sec. 1145.

5. **Cash requirements.** The disclosure statement should indicate the amount of cash to be paid upon confirmation of the plan and the expected source of such cash. If the debtor expects a cash infusion from an outside source or from principals which is to be repaid in the future, then the identity of the source as well as the repayment terms should be disclosed. Similarly, the effect of such infusions (i.e. principal and interest payments) should be reflected in the projections. Furthermore, since the Bankruptcy Code contemplates payment of administrative claims in cash upon confirmation, any waiver by administrative claim holders of this requirement should be disclosed.

6. **Administrative expenses and quarterly fees.** The disclosure statement should indicate all administrative expenses that have accrued, including but not limited to the debtor's attorney fees, which must be paid at the time of confirmation, or over the course of the plan if the party to whom the expenses are owed has consented to an alternative treatment. {See 11 USC Sec. 1129(a)(9)(A).} Such disclosure should include the expected amounts owed, the identity of the claimants, and the source of the funds from which they will be paid. In addition, the disclosure statement should provide that quarterly fees due to the United States Trustee under 28 USC Sec. 1930(a)(6) shall be paid in full on or before the effective date of the plan, as required under 11 USC Sec. 1129(a)(12), and provide an estimate of the amount of any quarterly fees remaining to be paid.

7. **History of the debtor.** The disclosure statement should describe the debtor's business, if appropriate, including those factors which may be unusual or peculiar to the business, such as seasonal cycles and unique products lines. The disclosure statement should contain a brief narrative description of the reasons for the debtor's financial difficulties and the steps taken to alleviate the situation since the inception of the case.

8. **Valuation of assets.** The disclosure statement should indicate, possibly in a separate schedule, the debtor's estimate of current values of assets, liens attaching to those assets, and the source of such estimated values (i.e. cost or appraisals).

9. **Historical and current financial information.** The disclosure statement should include historical and current financial data such as cash flow statements, income statements, and balance sheets to give creditors some perspective on both the debtor's current financial situation and prospects under the plan.

10. **Liquidation analysis.** A creditor cannot make an informed judgment regarding a plan without information as to available alternatives. Consequently, there should be some analysis as to what creditors would receive in a Chapter 7 liquidation. The disclosure statement should clearly indicate the difference between treatment accorded in the plan and that which creditors would receive under a Chapter 7 liquidation. {See 11 USC Sec. 1129(a)(7)(A)(ii).} Such a comparison might indicate the percentage return to creditors under each alternative and might include assumptions regarding liquidation values, administrative costs, etc. Any assumptions utilized by management in formulating a liquidation alternative should be disclosed. It is insufficient to merely

indicate that the plan will provide a better return than liquidation without any support information. A simple tabular presentation setting forth estimated administrative expenses, priority expenses, secured and unsecured claims, together with the debtor's estimated asset values (including sources of such values) is appropriate.

11. **Projections**. Projections are critical to a creditor's ability to assess the viability of the plan, especially where the plan calls for deferred payments to creditors and is based upon future earnings. The disclosure statement should include projections as far into the future as is practicable, including assumptions used by the debtor in formulating the projections, such as expected sales levels, gross and net profit levels, and inventory acquisition. At a minimum, the period covered by the projections should be commensurate with the period of payment deferral under the plan. Use of spreadsheets is encouraged.

12. **Post-petition events**. The disclosure statement should indicate whether any major post-petition events have occurred which might affect the case.

13. **Legal proceedings**. The disclosure statement should briefly describe all material legal proceedings to which the debtor is a party, proceedings which the debtor contemplates instituting, and legal proceedings which are known to be threatened against the debtor. The information should include the court in which the litigation is pending, its present status, the relief sought, the debtor's prognosis for the outcome, and the effect, if any, on the plan.

14. **Management compensation**. The disclosure statement should disclose the identities of top management, a description of their qualifications, and their salary levels after confirmation of the plan. {See 11 USC Sec. 1129(a)(5).} Further, this disclosure should include the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer or voting trustee of the debtor an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan and the identity of any insider who will be employed or retained by the reorganized debtor and the compensation for such insider.

15. **Insider and affiliate claims**. The disclosure statement should disclose the claims asserted by insiders as defined by 11 USC Sec. 101(30). This disclosure should include the identity of the claimant, the affiliation of the insider with the debtor, the circumstances giving rise to the claim, the amount of any claims the insider is asserting as a creditor and/or whether any or all of his claims have been or will be subordinated.

16. **Tax consequences**. The disclosure statement should describe the probable tax consequences to the estate if the plan is confirmed. If there are no tax consequences, it should contain an affirmative statement of that fact.

(Revised 6/93)